

1 John White, Esq.
2 Bar Number 1741
3 WHITE LAW CHARTERED
4 335 West First St.
5 Reno, NV, 89503
6 775-322-8000
7 775-322-1228 (Fax)
8 john@whitelawchartered.com

E-filed August 28, 2013

6 UNITED STATES BANKRUPTCY COURT
7 DISTRICT OF NEVADA

9 IN RE:

10 KINSLEY RESOURCES INC., a
11 Nevada Corporation

12 Debtor

BK-N 12-51217-btb
CHAPTER 11

OBJECTION TO CLAIM OF
FOURTH & ONE

13 Hearing Date: November 20, 2013
14 Hearing Time: 10:00 a.m.
15 Estimated Time for hearing: 1 hour

16 COMES NOW NEVADA INDUSTRIAL MINERALS LIMITED, a creditor in this
17 case (“NIML”), who objects to the Claim of Fourth & One (“Fourth”). Fourth’s claim
18 is detailed in the Debtor’s Schedule D, filed herein May 14, 2013 as a \$4,500,000
19 claim secured by patented and unpatented mining claims with an asserted value of
20 \$16,129,784 (the “Claim”).

21 This objection to the Claim is made pursuant to 11 USC Section 502(b) and local
22 rule 3007, and is based on the following grounds:

- 23 1. The Claim is unsupported by fact or law and is therefore invalid.
- 24 2. Fourth’s note, on information and belief, has been paid in full and therefore
25 Fourth is not a creditor.
- 26 3. A copy of the first page of the Claim, being continuation sheet 1 of 1 of Debtor’s
27 Schedule D (Docket 39) is attached hereto.

1 In support of this Objection, NIML relies upon the declaration of K. Sue Trimmer,
 2 Esq., filed separately herewith, the below Points and Authorities, and the files and
 3 records in this case.

4 Respectfully submitted this 28th day of August, 2013.

5 **WHITE LAW CHARTERED**

6
 7 /s/ John White
 John White, Esq.

8 **POINTS AND AUTHORITIES**

9
 10 **1 FACTS**

11
 12 Fourth loaned Debtor, Kinsley Resources Inc., significant monies on or about July 3,
 13 2007. Debtor issued its promissory note to Fourth and secured repayment of those
 14 funds with a deed of trust, recorded in the Office of the White Pine, Nevada, County
 15 Recorder as document # 338245, at book 480, pages 505 through 581, on July 18, 2007.
 16 On that same day, Fourth and Kinsley entered into a Kinsley Mountain Term Sheet
 17 ("Term Sheet"), which permitted Debtor to convert the note to an ownership interest
 18 in Debtor under certain circumstances. The following "Terms of the Deal" are found
 19 on page 2 of the Term Sheet:

20
 21 3) In the event that an immediate sale of the project to Dajobar Com-
 22 munity Investment, LLC (listed in the letter of intent) does not occur, the
 23 cash investors will receive a pro-rated share of 10% of the pretax profits of
 24 the Kinsley Resources Inc, related to this project. The note shall be deemed
 25 paid in full and the Deed of trust reconveyed through the issuance of shares
 26 equaling 10% equity in Kinsley Resources, Inc. shall be issued pro-rata to
 27 each investor (and or assignee) based upon each one's capital contribution.

28 ...

1 A copy of that Term Sheet is attached as Exhibit 1 to the Declaration of Sue Trimmer,
 2 Esq. in Support, filed separately herewith.

3 Thereafter, Debtor asserted that it had converted the note to equity in accordance
 4 with the Term Sheet's provisions. See Exhibit 2 to the aforesaid Trimmer Declaration¹

6 **2 ARGUMENT**

8 **2.1 Applicable Standards/Standing**

9 Though objections to claims are generally filed by the Trustee, 11 USC §502(a) allows
 10 any party in interest to object to a claim. §11 USC 502(b) provides that any claim
 11 for which a proof of claim has been filed will be allowed unless a party in interest
 12 objects. Movant is clearly a party in interest as its claim may be rendered wholly or
 13 partially unsecured as a practical matter if Fourth's Claim is allowed, to wit NIML's
 14 claim (Claim No. 4) is for \$5,156,671. Debtor's Schedule D shows that the Debtor
 15 values the property securing NIML's claim at \$9,171,838 and that the property se-
 16 curing NIML's junior claim is included within the property securing Fourth's senior
 17 (\$4,500,000) claim.

18 If a party in interest objects, the court, after notice and hearing, will determine
 19 the amount of the claim and will generally allow the claim except to the extent to the
 20 extent that the claim is "unenforceable against the debtor ... under any ... applicable
 21 law for a reason other than because such claim is contingent or unmatured." §11
 22 USC 502(b)(1). A properly filed claim is presumed valid under Fed.R.Bankr.P. 3001(1).
 23 However, once an objection to the proof of claim is filed, the creditor ultimately bears
 24 the burden of persuasion as to the validity and amount of the claim².

25 ¹ At some point litigation ensued between Fourth and Debtor in the Superior Court of California,
 26 County of Orange, Central Justice Center (30-2009-00123993) ("California Litigation"). Exhibit 2
 27 is a Declaration of Debtor's President, Bruce Anderson. According to the Declaration of Sue Trimmer,
 28 Esq, Exhibit 2 was filed in connection with the California Litigation. NIML is informed and believes
 that the California Litigation was settled. However Fourth has to date refused to provide NIML with
 a copy of that settlement.

² *Ashforth v. Consolidated Pioneer Mortg. (In re Consolidated Mortg.)*, 178 B.R. 222, 226 (9th Cir BAP

3 Fourth is not a secured creditor.

Fourth has not filed a claim in this Chapter 11 Case, nor is it required to file one so long as it consents to the manner in which its claim was scheduled by the Debtor. Fed.R.Bankr.P. 3003. However, the information attached to the supporting Declaration of Sue Trimmer shows that Fourth's Claim has been paid. Therefore it should not be allowed.

4 Conclusion

Based upon the foregoing, Debtors respectfully request that the Claim be disallowed in its entirety.

Dated this 28th day of August, 2013

WHITE LAW CHARTERED

/s/ John White
John White, Esq.

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B6D (Official Form 6D) (12/07)- Cont.

In re KINSLEY RESOURCES, INC.

Debtor

Case No. 12-51217

(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

| CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions, Above.) | CODEBTOR | HUSBAND, WIFE, JOINT OR COMMUNITY | DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL | UNSECURED PORTION, IF ANY |
|---|----------|--------------------------------------|--|------------|--------------|----------|---|---------------------------------|
| ACCOUNT NO. | | | PRINCIPAL BALANCE OF NOTE SECURED BY 6 UNPATENTED MINING CLAIMS IN ELKO COUNTY, NEVADA VALUE \$948,811.00 | | | | 300,000.00 | 0.00 |
| EUCON CORP. & DEATLEY CRUSHING BRIEN DeATLEY 4418 E. 8TH AVE. SPOKANE VALLEY, WA 99212 | | | | | | | | |
| ACCOUNT NO. | | | NOTE SECURED BY 44 LORD & SON UNPATENTED MINING CLAIMS, 54 KING UNPATENTED MINING CLAIMS IN ELKO AND WHITE PINE COUNTIES, AND 4 PATENTED MINING CLAIMS IN WHITE PINE COUNTY, NEVADA VALUE \$16,129,784.00 | | | | 4,500,000.00 | 0.00 |
| ACCOUNT NO. | | | PRINCIPAL BALANCE OF NOTE SECURED BY STATE OF NEVADA APPROPRIATION PERMITS #52895, 80589, 80590 AND 80591 FOR WATER RIGHTS VALUE \$11,282,000.00 | | | | 100,000.00 | 0.00 |
| ACCOUNT NO. | | | PRINCIPAL BALANCE OF NOTE SECURED BY 5 UNPATENTED MINING CLAIMS IN ELKO COUNTY, NEVADA VALUE \$790,676.00 | | | | 155,088.04 | 0.00 |
| VANCE, TERRY 100 ECNAV LANE CRESCENT CITY, CA 95531 | | | | | | | | |

Sheet no. 1 of 1 continuation
sheets attached to Schedule of
Creditors Holding Secured
ClaimsSubtotal ➤
(Total of this page)

\$ 5,055,088.04 \$ 0.00

Total ➤
(Use only on last page)

\$ 6,117,319.12 \$ 0.00

(Report also on Summary of (if applicable, report
also on Statistical
Summary of Certain
Liabilities and
Related Data)